

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. OP 17-0322

ROBERT D. BASSETT,

Plaintiff/Appellant,

-vs-

PAUL LAMANTIA; CITY OF
BILLINGS,Defendants/Appellees.

BRIEF OF AMICI MCAA, MSPOA, MPPA, and MACOP

Original Proceeding Based on a Certified Question from the Ninth Circuit Court of Appeals,
Reported at 858 F.3d 1201 (9thCir. 2017)

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STATEMENT OF THE ISSUE

Whether, under Montana law, the public duty doctrine shields a law enforcement officer from liability for negligence where the officer is the direct and sole cause of the harm suffered by the plaintiff?

STATEMENT OF THE CASE

The Montana County Attorney's Association, Montana Sheriff's and Peace Officer's Association, Montana Police Protective Association, and Montana Association of Chiefs of Police ("Amici") agree with Defendant/Appellee Lamantia's ("Lamantia's") Statement of the Case.

STATEMENT OF THE FACTS

Amici agree with Lamantia's Statement of the Facts.

STANDARD OF REVIEW

Amici agree with Defendant/Appellee's City of Billings' Standard of Review.

SUMMARY OF THE ARGUMENT

A patrol officer deals with uncertainties on every shift. One such uncertainty is that an officer responding to a 911 call often has little actual knowledge of what he or she is dispatched to investigate. A 911 call may turn out to be a mundane situation easily handled by the responding officer. On the other hand, a 911 call may lead to a confrontation with an armed suspect where the responding officer puts his or her life

on the line to protect Montana's citizens.

To prevent liability resulting from an officer's on-the-scene decisions, this Court has held that officers deserve protection from lawsuits brought against them for performing such duties. The public duty doctrine stems, in part, from a recognition of the difficulties of police work.

Lamantia was dispatched in the dead of night to investigate a disturbance report. When he went into a darkened back yard to look for a suspect Lamantia was surprised by Bassett. Lamantia reacted by tackling Bassett. Lamantia's reaction was justified. Under these circumstances the public duty doctrine should shield Officer Lamantia from liability in this case.

There are exceptions to the public duty doctrine by which a law enforcement officer may owe a duty of care to an individual member of the public. None of those exceptions apply in this case. In answering the certified question in this case this Court should not create new exceptions to the public duty doctrine.

Bassett has not challenged the constitutionality of the public duty doctrine, and has not sought the abolition of the doctrine. Thus, this Court should disregard the broad attacks, including the constitutional attack, on the doctrine posed by Amicus MTLA.

ARGUMENT

I. THIS COURT SHOULD HOLD THAT MONTANA’S PUBLIC DUTY DOCTRINE SHIELDS LAMANTIA FROM LIABILITY.

A. The public duty doctrine protects emergency service providers from tort liability.

In *Nelson v. Driscoll*, 1999 MT 193, ¶¶21, 295 Mont. 363, 983 P.2d 972, this Court held that a police officer’s “duty to protect and preserve the peace is owed to the public at large and not to individual members of the public”. This Court stated that “[t]he public duty doctrine ‘serves the important purpose of preventing excessive court intervention into the governmental process by protecting the exercise of law enforcement discretion’”. *Id.* (internal citation omitted).

This Court acknowledged the doctrine’s applicability to law enforcement activities in its recent decision of *Gatlin-Johnson vs. City of Miles City*, 2012 MT 302, ¶¶15, 367 Mont. 414, 291 P3d 1129.

Recently this Court narrowed the applicability of the doctrine in cases where the defendants performed governmental duties other than law enforcement duties. *See Gatlin, supra*, ¶¶21-23 (City installed and maintained playground equipment on which a child was injured; it was foreseeable that City’s failure to exercise care with playground equipment might lead to injury and therefore City owed a duty of reasonable care to maintain the equipment); *Kent v. City of Columbia Falls*, 2015

MT 139, ¶52, 350 P.3d 9, 379 Mont. 190 (City was actively involved in monitoring, determining, and approving the engineering aspects of a trail system and therefore owed either or both a statutory duty and a duty of ordinary care toward injured skateboarder).

The jobs performed by the city planners, engineers, and officials in *Gatlin* and *Kent* are markedly different than the job performed by Lamantia. Much time can be taken in designing and installing playground equipment and walking paths. Much time can be taken by those with administrative or quasi-judicial decision making powers of approval of the plans for such projects. Such work, although important, has nothing in common with the fluid and unpredictable environment in which Lamantia performed his duties.

Persons performing emergency service work such as that undertaken by Lamantia are uniquely suited to receive the benefit of the public duty doctrine. Notwithstanding the recent narrowing of the doctrine's applicability, in cases such as Lamantia's the doctrine "prevent[s] excessive court intervention into the governmental process by protecting the exercise of law enforcement discretion". *Nelson*, ¶21. The federal district court ruled correctly that the doctrine applied in this case, and this Court should answer the certified question in the affirmative.

B. There was no special relationship created between Bassett and Lamantia.

This Court has set forth circumstances in which a government officer may owe a duty of care toward a specific individual:

There are four recognized situations in which a special relationship has been found: (1) where a statute intended to protect a specific class of persons from a particular type of harm imposes a duty; (2) where the government agent undertakes a specific action to protect a person or property; (3) where government action reasonably induces detrimental reliance by a member of the public; and (4) where the government has actual custody of the plaintiff or of a third person who harms the plaintiff. (citation omitted)

Gonzales v. City of Bozeman, 2009 MT 277, ¶20, 352 Mont. 145, 217 P.3d 487.

None of the *Gonzales* exceptions apply in this case. Bassett conceded this point when he implored this Court to create, in effect, an entirely new exception to the public duty doctrine. App.Brf., pg.4; pgs. 6-8.

As no special relationship existed between Bassett and Lamantia, the public duty doctrine applies in this case.

C. This Court should not create a new exception to the public duty doctrine.

Under the current state of the law, this case is ideally suited for application of the public duty doctrine. Bassett tries to convince this Court to change the rules of the game. Thus, Bassett argues that “[this Court] has never applied the public

duty doctrine to cases where the law enforcement officer is the sole alleged cause of the plaintiff's injury". Brf., pg. 6.

Bassett's argument creates an insurmountable problem. Bassett maintains that by merely alleging that a law enforcement officer is the "sole alleged cause" of a plaintiff's injury the public duty doctrine should not apply. The problem is that Bassett's argument does not address the element of duty. If the defendant owed no duty to a plaintiff, then causation issues need not be addressed by a court, no matter how strenuously or skillfully the plaintiff argues the causation issues.

Bassett then argues that this Court should somehow ignore the public duty doctrine and decide the case based on "common law negligence principles". Brf., pg. 8. Bassett, citing to *Kent, supra*, suggests that this Court substitute a private person for Officer Lamantia and then decide that "if a private person running through Bassett's yard . . . mistakenly tackled and injured [Bassett], that private person would certainly be liable for the damages caused by those injuries". Brf., pg. 9.

Given the facts of this case, Bassett's private citizen argument is illogical. The City of Billings does not employ private citizens to face the unpredictable and dangerous situation faced by Lamantia. Instead, the City of Billings employs police officers. Lamantia exercised his discretion to pursue the suspect who ran from

Lamantia. The rationale for the doctrine set forth in *Nelson*, ¶ 21, is that it “serves the important purpose of preventing excessive court intervention into the governmental process by protecting the exercise of law enforcement discretion” (emphasis added). The rationale is directed in favor of the police, who are governmental employees. The rationale has no application to private citizens.

Bassett’s arguments and reasoning for a new “sole cause of injury” exception to the public duty doctrine are not persuasive.

D. MTLA’s arguments seek relief not sought by the parties, and far exceed the scope of the question certified by the Ninth Circuit.

Amicus MTLA argues that this Court should find the public duty doctrine unconstitutional, Brf., pgs. 6-8, and that the doctrine should be done away with as “policy considerations in support of the . . . doctrine fail to justify its retention”. Brf., pg. 8.

The relief requested by MTLA, specifically that of abolishing the doctrine in its entirety, has not been sought by Bassett. MTLA is not a party to this case. MTLA may not ask this Court for relief that has not been sought by a party to this case.

In *Reichert v. State ex rel. McCulloch*, 2012 MT 111, 365 Mont. 92, 278 P.3d 455, this Court held that

[t]he general rule, therefore, is that “[s]ince amici curiae are not parties and cannot assume the functions of parties, nor create, extend or enlarge issues, we . . . consider . . . the briefs of amici only insofar as they coincide with the issues raised by the parties to that action.”

Id., ¶26. The general rule should be followed in this case and this Court should not consider MTLA’s attempt to create issues that would lead to abolishing the public duty doctrine.

Further, MTLA’s arguments exceed the scope of the certified question. This Court has previously refused to consider arguments outside of the scope of the certified question. *Van der Hule v. Mukasey*, 2009 MT 20, ¶ 6, 349 Mont. 88, 217 P.3d 1019.

CONCLUSION

This Court should answer the certified question in the affirmative.

DATED this 24TH day of August, 2017.

/s/ Marty Lambert
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(a), M.R.App.P., I certify that this brief is printed with a proportionately-spaced Word for Windows Times New Roman typeface of fourteen points; is double-spaced; and contains 1,605 words, excluding the table of contents, table of citations, certificate of service, and certificate of compliance.

/ s / Marty Lambert

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